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BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

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U.S.-TORONTO SERVICE PROCEEDING

) Docket OST-95206
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ANSWER OF
DELTA AIR LINES, INC. TO OBJECTIONS

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September 15, 1995

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**BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.**

U.S.-TORONTO SERVICE PROCEEDING

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**ANSWER OF
DELTA AIR LINES? INC. TO OBJECTIONS**

By Order 95-8-35 ("Show Cause Order"), the Department tentatively awarded first-year U.S.-Toronto certificate authority to Delta Air Lines, Inc. ("Delta") between Atlanta and Toronto and to USAir, Inc. ("USAir") between Pittsburgh and Toronto.

Objections to the Show Cause Order were filed by Continental Airlines, Inc. ("Continental") and Trans World Airlines, Inc. ("TWA")." Delta hereby submits this consolidated answer to the objections.

1. Continental. Continental submitted a pro forma objection (only two and one-half pages long) to the Show Cause Order. Continental's filing merely stated its position that Continental's Newark-Toronto proposal should be selected for the reasons it previously articulated (which were rejected by the Department). Continental also urged the Department to institute promptly a proceeding to consider the award of second-year Toronto authority.

^{1/} Northwest Airlines, Inc. ("Northwest") did not file objections to the Show Cause Order.

Continental's cursory submission does not come close to meeting the Department's requirements for "properly supported objections" and fails to provide any basis whatsoever for reversal of the Department's selection of Delta's Atlanta-Toronto application.

Continental's objection consists of all of two sentences, which simply assert in conclusory fashion, that its proposal is superior to USAir's and Delta's. While Continental accuses the DOT of reaching a decision that will have an "anticompetitive effect", the evidence demonstrates that an award to Continental would both fail to enhance consumer benefits and would be antithetical to competition. An award to Continental would benefit its owner-partner -- Air Canada -- by supplementing Air Canada's traffic flow and thereby diminish, not enhance, competition during the phase-in period of the bilateral.

Moreover, Continental's poor track record of using rights available under the new U.S.-Canada agreement inspires little confidence that Continental should be entrusted with valuable limited-entry Canadian authority. Continental has materially defaulted on its U.S.-Vancouver authority by delaying for eighty-three days its proposed start-up and then by terminating service after only a few months, initially without even advising the Department of its termination plans." Continental's service default on the valuable Vancouver route resulted in the waste of one of the precious first-year Vancouver rights available to U.S.-flag carriers under the bilateral.

^{2/} Delta became aware of Continental's termination of Newark-Vancouver service and immediately advised the Department. It was only after the Department directed Continental to submit a statement concerning its Vancouver service plans that Continental revealed to the Department its intent to terminate both Newark-Vancouver and Houston-Vancouver nonstop service.

2. TWA. TWA's scatter-gun objection also fails to meet the Department's requirements for objections. Because TWA has not addressed the Delta Atlanta-Toronto route with any specificity, it is difficult to determine whether TWA is objecting to the Department's tentative decision to grant Delta's application. It is clear that the main thrust of TWA's opposition is directed at the proposed award to USAir:

"TWA therefore urges that the award of a Pittsburgh-Toronto route to USAir be reconsidered and withdrawn, and that the Department, instead, grant TWA a certificate for St. Louis-Toronto service.

* * *

Even under the criteria chosen by the Department, TWA's proposal is far superior to that of USAir.

* * *

There is no basis for believing that added authority for USAir will maximize the U.S.-flag position *vis-a-vis* Air Canada.

* * *

USAir's Pittsburgh's service does not provide the benefits alleged by the Department.

* * *

It is particularly unfortunate that the Department appears not to have analyzed the briefs in this investigation with respect to USAir's Pittsburgh hub.

* * *

When the deficiencies of its Pittsburgh hub are considered in light of the additional Washington-Toronto authority that will be awarded to USAir, it is clear that the Pittsburgh-Toronto route award should be rejected in favor of a St. Louis-Toronto route for TWA."

* * *

TWA Objections at 2, 5, 7 and 8.

TWA chastises the Department for allegedly "ignor[ing] almost all of the public policy issues that it said it would consider when it instituted this proceeding." TWA

Objections at 1. Yet it is TWA, not the Department, that has ignored the Department's established policy criteria, as well as the record, which irrefutably establishes the superiority of Delta's Atlanta-Toronto proposal.

With the exception of a single issue -- the award of additional Toronto authority to an incumbent carrier (which Delta discusses below) -- TWA's objection does not challenge the Department's decision to award Delta Atlanta-Toronto authority. Atlanta-Toronto is the largest and most important U.S.-Toronto market without nonstop service and Delta's Atlanta hub is the largest connecting complex in this case (indeed, in the world). Atlanta was the first U.S. city to which Air Canada initiated nonstop service under the new bilateral. Air Canada currently operates five daily nonstop flights between Atlanta and Toronto. Thus, Delta will not only maximize intragateway competition against Air Canada at the Atlanta gateway, Delta's massive Atlanta hub will also maximize intergateway competition against other carriers (both U.S. and foreign) in behind-gateway Toronto markets. Neither TWA's St. Louis-Toronto proposal nor USAir's Pittsburgh-Toronto proposal comes close to matching the service and competitive market structure benefits that will be produced by an award of Atlanta-Toronto authority to Delta.

The only argument raised by TWA involving Delta relates to the issue of whether an award to Delta would increase "concentration" in the U.S.-Toronto market because Delta is an incumbent. This assertion is both wrong and irrelevant. First, Delta's existing Toronto service is limited to only one market-- Pittsburgh-Toronto. Second, the current Toronto services operated by Delta are not located at Delta hubs, a product of the archaic

former bilateral agreement which, as the Department observed, “resulted in a market structure between the United States and Toronto in which the two governments, rather than the forces of a free market, determined which gateways would provide what levels of service. . . [and] forced traffic over some perverse gateways.” Order 95-8-35 at 7.

Moreover, Delta cannot adequately serve Atlanta -- the largest U.S.-Toronto market without nonstop service -- and the southeast via its existing gateway. Rejection of Delta’s application would therefore cede the large Atlanta gateway to a foreign-flag monopoly, a result that is completely inconsistent with U.S. international aviation policy.

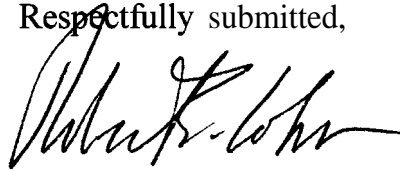
TWA’s so-called concentration argument is irrelevant because, as the Department correctly observed, the U.S.-Canada bilateral agreement will, in a relatively short period of time, move to an unrestricted “open skies” regime in the Toronto market. Order 95-8-35 at 7. TWA’s claim that an award to Delta might impair the ability of other U.S. carriers to become major competitive factors in the U.S.-Toronto market is, in a word, silly, and actually underscores the inherent weakness of any TWA Toronto proposal in this or future carrier-selection cases.

3. The one, and only, point on which Delta can concur is the need for the Department to conclude this case promptly and institute a proceeding to consider the allocation of second-year Toronto authority. In this connection, Delta strongly urges the Department not to employ a two-track exemption/certificate process, but rather to utilize a single-track accelerated certificate process to consider the second-year Toronto awards. A single-track approach will be more efficient for the Department and interested parties. If a certificate proceeding is instituted immediately, there should be sufficient time

without placing unnecessary demands on the parties to develop a record and for the Department to make its final award prior to February 24, 1996, the date on which the second-year Toronto authority becomes effective under the U.S.-Canada bilateral.

In conclusion, Continental and TWA have failed to establish any basis for reversing the Department's decision to award Delta Atlanta-Toronto certificate authority.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert E. Cohn", written over the word "Respectfully" in the preceding line.

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CERTIFICATE OF SERVICE

I hereby **certify** that a copy of the foregoing Answer of Delta Air Lines, Inc. was served this 15th day of September, 1995, on all persons listed on the attached service list.



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